

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Douglas J. McClure,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06C-12-235
)	
Catholic Diocese of Wilmington,)	
Inc., and St. Ann's Catholic Church,)	
)	
Defendants.)	

Submitted: January 9, 2009
Decided: January 12, 2009
Supplemental Opinion Issued: February 26, 2009

Opinion

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SCOTT, J.

I. Introduction

Before the Court is Plaintiff's request that a health care professional, selected by Plaintiff, be permitted to attend and tape record the independent psychiatric examination. On January 12, 2009, this Court issued a short Order finding that the examination could not be recorded and that a health care professional could not attend the examination. However, it ruled that a health care professional could accompany Plaintiff to the examiner's office and Plaintiff could consult with the health care professional concerning health issues at any point during the examination. In that Order, this Court reserved the right to supplement its decision. The following Opinion is supplemental to the January 12, 2009 Order.

II. Background

This is a clerical sex abuse case filed on December 28, 2006 against Defendants seeking money damages for personal injuries arising from assault and battery, negligence and related tort claims. Plaintiff claims that he was sexually molested by the late Reverend Edward B. Carley. Plaintiff claims that the abuse began when he was eight years old and continued for approximately two years. He claims that until recently, in January 2005, he had suppressed all memories of the abuse.

III. Discussion

The Parties do not dispute the need for an independent psychiatric examination in this case pursuant to Superior Court Civil Rule 35.¹

However, Plaintiff requests that a health care professional, selected by Plaintiff, be permitted to attend and tape record the examination. At a Scheduling Conference held on January 9, 2009, the Parties presented argument to the Court on this matter.

Plaintiff argues that he is in poor health and therefore the accompaniment of a health care professional is necessary to monitor his physical condition. In support of his position, Plaintiff relies on *Rochen v. Huang*² in which this Court allowed plaintiffs to select a health care practitioner to be present during their independent psychiatric examinations. In *Rochen*, the plaintiffs were four women who claimed to have been sexually abused by their doctor during the course of his treatment. Plaintiffs

¹ Super. Ct. Civ. R. 35. This rule provides in part: [w]hen the mental or physical condition of a party or of a person in custody or under the legal control of a party, is in controversy, the Court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

² 558 A.2d 1108 (Del. Super. Dec. 9, 1988).

argued that they had been traumatized by the incidents and they would be further traumatized by extensive interrogation by another male physician. Given the sensitive nature of their claim (sexual abuse during a private medical examination), the Court found sufficient justification to allow Plaintiffs to select a health care professional to be in the room during an otherwise private examination.

Plaintiff fails to establish an equally persuasive justification in this case. Indeed, the only justification offered by Plaintiff is that because the defense examiner is under no duty to protect Plaintiff's health, a health care professional is necessary to monitor his physical condition. Plaintiff offers no evidentiary basis for this position. The Court is confident that the defense examiner would not place Plaintiff's health in jeopardy in the course of his examination and that should Plaintiff experience health problems during the examination, the examiner would not hesitate to provide immediate aid.

The Court is sensitive to the fact that Plaintiff's psychiatric examination may cause mental and physical distress to the Plaintiff and that the accompaniment of a health care professional may alleviate some of that distress. However, the Court is also mindful of Defendants argument that the presence of a health care professional during the examination could have

a chilling effect and could compromise the evaluation technique of the examiner. In balancing these competing interests, the Court finds that a health care professional may accompany Plaintiff to the examiner's office but the health care professional will not be permitted in the examination room during the exam. Plaintiff may consult with the health care professional concerning health issues at any point during the examination. Because Plaintiff fails to establish how tape recording the examination relates to the protection his health, tape recording will not be permitted.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.